

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALEXANDER SAMUEL SMITH

Defendant.

DOCKET NO. 3:17-CR-182-MOC

**Reply to Government's Opposition to
Reconsideration of Release
Pending Sentencing
REQUEST FOR HEARING**

The Court should grant Mr. Smith's Motion for Reconsideration and order him released to home incarceration on RF monitoring technology pending incarceration.¹ The government does not dispute any of Mr. Smith's characteristics or actions during the course of this investigation and prosecution, which present clear and convincing evidence that he will not flee or pose a danger to the community.

Instead, the government relies on a number of legal errors to suggest that Mr. Smith's false statement with a statutory maximum of eight years is *per se* sufficient to overcome his showing that there is no risk of flight or danger to the community. This includes (1) the government's anticipation that the Court will commit a clear error of law by applying the wrong standard for Mr. Smith's multiplicity motion to double his imprisonment exposure, and (2) mischaracterizing the standard for the Guidelines' terrorism enhancement. Mr. Smith's two false statements in a single interview comprise only one violation of 18 U.S.C. § 1001, thereby establishing a maximum sentence of 8 years. *See* Mot. To Dismiss, Dkt. #71; Reply to Gov't Resp., Dkt. #78. In addition, although the

¹ RF technology uses 24-hour electronic surveillance to alert the Probation Office when a participant leaves/enters a specific residence or tampers with the monitoring equipment.

government cursorily asserts the terrorism enhancement “clearly” applies to a false statement involving international terrorism, it fails to even identify the “*federal crime of terrorism*” Mr. Smith supposedly participated in or promoted. *Compare* Gov’t Opp., Dkt. #85 at 3 *with* U.S.S.G. § 3A1.4 (applies to a felony offense “that involved, or was intended to promote, a federal crime of terrorism” as defined in 18 U.S.C. § 2332b(g)(5)).

Federal crimes of terrorism, such as plotting to assassinate foreign officials or mass terrorist acts on a subway, are indeed deeply serious crimes that rightly carry severe sanctions up to life imprisonment. 18 U.S.C. § 2332b(c)(1)(A). However, Mr. Smith’s crime *does not fall under this purview* and is, according to Congress, a low-level offense. The government appears to concede this through their silence on Congress’s decision to treat Mr. Smith more leniently than most of the people their office charges everyday with drug distribution, child pornography offenses, and fraud.

The government snidely derides Mr. Smith exercising his right to a trial by jury as “delusional[,]” Gov’t Br. at 4, but he respects the jury’s verdict and is asking the Court for a chance to put his affairs in order and spend time with his family and say his goodbyes prior to this Court’s sentence.

For these reasons and the reasons in his Motion for Reconsideration, Dkt. #84, Mr. Smith should be released on home incarceration with RF technology monitoring pending sentencing.

Dated: May 2, 2019

Respectfully Submitted,

s/ Kevin A. Tate
Kevin A. Tate
NC Bar 38548
Senior Litigation Counsel
E-Mail: kevin_tate@fd.org
Melissa S. Baldwin
MA Bar #690012
Assistant Federal Public Defender
Melissa_Baldwin@fd.org
Federal Public Defender for the
Western District of North Carolina
129 West Trade Street, Suite 300
Charlotte, NC 28202
(704) 374-0720
Fax: (704) 374-0722
Counsel for Alexander Samuel Smith

CERTIFICATE OF SERVICE

I Kevin A. Tate, hereby certify that on this the 2nd day of May, 2019, the foregoing Response in Support of Motion for Reconsideration of Release Pending Sentencing, and Request for Hearing, was served electronically through ECF filing upon all referenced counsel at their electronic mail address on file with the Court.

Michael E. Savage
Assistant United States Attorney
U.S. Attorney's Office
227 West Trade Street, Suite 1650
Charlotte, North Carolina 28202
Telephone: (704) 338-3166
Fax: (704) 227-0197
Email: mike.savage2@usdoj.gov

s/ Kevin A. Tate
Kevin A. Tate
Counsel for Alexander Smith